certain inquiries made by the witness. The supreme court, deeming the opinion to have been based principally on plaintiff's statement of past conditions, *held,* the admission was reversible error. *Hintz* v. *Wagner* (N. D. 1913) 140 N. W. 729.

In delivering the opinion of the court Chief Justice SPALDING said that the testimony of expert witnesses should, in general, be confined to the result of their actual investigations, and not based upon hearsay evidence, self-serving declarations, or statements of other parties made under circumstances admitting of coloration or exaggeration for its effect upon the verdict." In this connection see *Vosburg* v. *Putney,* 78 Wis. 84; *Chicago & E. I. R. Co.* v. *Donworth,* 203 Ill. 192; *West Chicago St. R. R. Co.* v. *Carr,* 170 Ill. 478. In *Federal Betterment Co.* v. *Reeves,* 73 Kan. 107, 4 L. R. A. N. S. 460, the principle is thus stated, "The witness was an expert who under the rules of evidence might give his opinion based either on facts testified to by others, or upon hypothetical questions put to him, or upon an examination of the patient; but he could not testify to conclusions arrived at from the history of the case given him by the patient or others. * * * Nor can a physician give his opinion based partially upon what he has been told of the case, and partially upon what information he obtained by an examination of the patient."

HUSBAND AND WIFE—POWER OF HUSBAND TO DISPOSE OF HIS PERSONALTY BY GIFT CAUSA MORTIS.—Decedent had made provision in his will for leaving a large part of his estate to charitable uses. During his last illness, upon being advised that his wife would still be entitled to her share of the property in spite of the will, he executed and delivered assignments of certain stocks and bonds to trustees upon the same trusts as stated in the will, with the provision that the income from said stocks and bonds should be paid to him during his life. The widow, having elected not to take under the will, brought suit to have said assignments set aside. *Held,* the assignments constituted gifts *causa mortis,* but were invalid, because the husband cannot deprive his wife of her dower rights in his personalty by such a transfer. *Crawfordsville Trust Co.* v. *Ramsey,* (Ind. App. 1913) 100 N. E. 1049.

Vosberg v. *Mallory et al.* (Ia. 1912), 135 N. W. 577, is opposed to the principal case. For a discussion of the conflict on this question, see a note on the *Vosberg* case in 10 MICH. L. REV. 652.

INSURANCE—LIABILITY IN TORT FOR NEGLIGENT DELAY IN FORWARDING APPLICATION. Through the negligence of the general agent who solicited the application, the same was not forwarded to the head office after a satisfactory medical examination had been passed, until after the applicant died. *Held,* the personal representatives of the deceased may recover the value of the policy as damages in an action in tort. *Duffie* v. *Banker's Life Association of Des Moines* (Iowa, 1913) 139 N. W. 1087.

The stipulation in the application that the policy should not take effect until the same was delivered to the applicant while in good health, was held

to be no bar to an action in tort against the insurer. A prerequisite to recovery is said to be proof that except for the negligence of the agent the policy in all reasonable probability would have been issued. The difficulty of proof is avoided by the presumption arising from a successful medical examination that the risk would in due course be accepted. But the novel feature of this case is the holding that an action *ex delicto* lies against the insurer. It would be a strange doctrine if ordinary private parties were held liable for negligence in failing to accept or reject a proposed offer. While such a liability has been enforced against public service companies, it cannot be said that insurance companies have been recognized as owing any such duty to the public. True, the business of insurance affects so vitally the public as to make the state regulation and control of insurance companies at this day unquestionable. However, no claim can be made that these corporations have been classified with those companies possessing the power of eminent domain with all their resulting obligations to the public. But the principal case holds that this public control creates a duty on the part of insurance companies in favor of the applicant to furnish indemnity or to decline to do so within such reasonable time as will enable the applicant to seek insurance elsewhere. The only other case involving this question seems to be *Boyer* v. *State Farmer's Mutual Hail Ins. Co.*, 86 Kan. 442, 121 Pac. 329, 40 L. R. A. N. S. 164, which is in accord with the principal case and is approved by the annotator in the L. R. A. series. Conceding the liability, the injury done was to the applicant himself, hence the proper parties plaintiff were the deceased's personal representatives and not the proposed beneficiary. The doctrine that the insurer is liable in tort will undoubtedly be readily seized upon in other jurisdictions for the reason that by the overwhelming weight of authority the insurer is not liable *ex contractu* for such delays. *N. W. Mutual Life Ins. Co.* v. *Neafus*, 145 Ky. 563, 140 S. W. 1026, 36 L. R. A. N. S. 1211; *More* v. *N. Y. Bowery Ins. Co.*, 130 N. Y. 537, 29 N. E. 757, *reversing* 55 Hun. 540, 10 N. Y. Supp. 44; *Brink* v. *M. & F. N. M. Ins. Ass'n*, 17 S. D. 235, 95 N. W. 929. But see *Robinson* v. *U. S. Benev. Soc.*, 132 Mich. 695, 94 N. W. 211, 102 Am. St. Rep. 436.

JUDGMENT—SUFFICIENCY OF AFFIDAVIT IN SERVICE BY PUBLICATION.—The statute required an affidavit for publication of summons to state that the postoffice address of the adverse party was unknown. The affidavit in a suit stated that the "residence" of the defendant was unknown. *Held*, the judgment rendered thereon was void. *Norris* v. *Kelsey*, (Colo. 1913) 130 Pac. 1088.

The general principle is that statutes providing for service by publication must be strictly complied with, for the reason that such proceedings are in derogation of the common law, *Pennoyer* v. *Neff*, 95 U. S. 714; *Schoenfeld* v. *Bourne*, 159 Mich. 139; *Schuck* v. *Moore*, 232 Mo. 649; *People* v. *Mulcahy*, 159 Calif. 34; *Tunis* v. *Withrow*, 10 Ia. 305, 77 Am. Dec. 117. Every fact should be shown in the affidavit which is necessary under the statute to give the right to an order for service by publication, *Lumber Co.* v. *Johnson*, 196 Fed. 56; *Harvey* v. *Harvey*, 85 Kan. 689; *Fontaine* v. *Houston*, 58 Ind. 316;